

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**MOBILE BAYKEEPER, INC.,
Plaintiff,**

v.

**ALABAMA POWER COMPANY,
Defendant.**

Case No.: 1:22-cv-00382-KD-B

ORAL ARGUMENT REQUESTED

**DEFENDANT ALABAMA POWER COMPANY’S
REQUEST FOR JUDICIAL NOTICE**

Defendant, Alabama Power Company (“Alabama Power”) respectfully requests, pursuant to Federal Rule of Evidence 201, that this Court take judicial notice of the following records from pending litigation in the D.C. Circuit in *Electric Energy, Inc., et al. v. U.S. EPA*, No. 22-1058 (filed Apr. 8, 2022) (consolidated with No. 22-1058) that Alabama Power notified the Court of in its Corrected Motion to Dismiss (Doc. 60, PageID.13947):

1. Brief filed December 6, 2022 by Electric Energy, Inc. and other utilities seeking review of the Environmental Protection Agency’s (“EPA”) regulations and requirements promulgated on January 11, 2022, attached hereto as Exhibit 1;

2. Brief filed September 29, 2023 by EPA in response to Electric Energy, Inc.’s December 6, 2022 brief, attached hereto as Exhibit 2.

This Court may take judicial notice of documents at the motion to dismiss stage. *See* Fed. R. Evid. 201; *McCone v. Thorpe*, 828 F. App’x 697, 698 (11th Cir. 2020) (“A district court may take judicial notice of public records without converting a motion to dismiss into a motion for summary judgment.”); *Douglas v. Bayview Loan Servicing, LLC*, No. CA 11-00495-KD-C, 2012

WL 345364, at *3 (S.D. Ala. Jan. 13, 2012) (court “may consider ... documents whose contents are alleged in the complaint and whose authenticity is not questioned ... without converting the [12(b)(6)] motion to dismiss to a motion for summary judgment”) (internal quotations and citations omitted)).

This Court may take judicial notice of a fact “not subject to reasonable dispute [and]...capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Specifically, a court may take judicial notice of matters of the public record, including pleadings, decisions, orders, and other documents filed in another court. *See United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (“a court may take judicial notice of a document filed in another court” (internal quotations and citation omitted)); *see also Schwarz v. United States*, 828 F. App'x 628, 633 n.1 (11th Cir. 2020).

The attached exhibits are copies of public court filings that are subject to judicial notice because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

/s/ Ed R. Haden
One of the Attorneys for the Defendant
Alabama Power Company

OF COUNSEL:

Ed R. Haden (ehaden@balch.com)
Charles Burkhardt (cburkhart@balch.com)
Steven A. Burns (sburns@balch.com)
Sean W. Shirley (sshirley@balch.com)
BALCH & BINGHAM LLP
Post Office Box 306
Birmingham, AL 35201-0306
Telephone: (205) 251-8100

Jaime W. Betbeze (jbetbeze@maynardnexsen.com)
Raymond L. Bell, Jr. (rbell@maynardnexsen.com)
Evan N. Parrott (eparrot@maynardnexsen.com)
MAYNARD NEXSEN P.C.

RSA Battle House Tower
11 N. Water St., Ste. 24290
Mobile, Alabama 36602
Telephone: (251) 432-0001

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will forward a copy thereof to all attorneys of record.

/s/ Ed R. Haden
Of Counsel